explanatory thereof, plaintiff relied upon some science and theory not generally known or understood, it was proper for him to give the jury the light of some competent evidence tending to sustain the probabilities, or at least possibilities, of what was claimed. Nothing of this kind was done upon the trial, unless there may have been read then, as upon this appeal, the unverified statements and opinions of certain authors. We are unwilling to accept them, or the otherwise unconfirmed statements of the witness that at certain times in 1900 she was placed in an hypnotic condition whereby she was made unconscious, and again in a similar condition in 1901 whereby she was made conscious, of certain events. The rejection of this evidence leaves this case, in our opinion, without sufficient testimony upon which to rest the burden carried by plaintiff to properly establish his case, and sustain the verdict of the jury."

BROKERS — COMMISSIONS — DISCHARGE—EFFECT.—Where a real estate broker, having failed to effect a sale to a prospective purchaser, was discharged, and assented to the discharge, and another broker was employed by the principal, through whom a sale to the purchaser procured by the first broker was effected, the first broker was not entitled to commission on the sale, the principal having acted in good faith, and not merely to escape payment of commissions. *Leonard* v. *Eldredge* (Mass.), 69 N. E. 337.

Per Hammond, J:

"In *Sibbald* v. *Bethlehem Iron Co.*, 83 N. Y. 378, 38 Am. Rep. 441, the following language is used: 'If in the midst of negotiations instituted by the broker, and which were plainly and evidently approaching success, the seller should revoke the authority of the broker with the view of concluding the bargain without his aid and avoiding the payment of commissions about to be earned, it might well be said that the due performance of his obligation by the broker was purposely prevented by the principal. But, if the latter acts in good faith, not seeking to escape the payment of commissions, but moved fairly by a view of his own interest, he has the absolute right, before a bargain is made, while negotiations remain unsuccessful, before commissions are earned, to revoke the broker's authority, and the latter cannot therafter claim compensation for a sale made by the principal, even though it be to a customer with whom the broker unsuccessfully negotiated, and even though, to some extent, the seller might justly be said to have availed himself of the fruits of the broker's labor.'

"Without now deciding whether the rule stated in the last paragraph is of universal application, it is sufficient to say that it is applicable to the facts of this case, and that the instructions to the jury were correct. The doctrine of efficient cause has no application to a case like this."

CONSTITUTIONAL LAW—LIBERTY OF CONTRACT—CLASS LEGISLATION—SALES OF MERCHANDISE IN BULK—NOTICE TO CREDITORS.—St. 1903, p. 389, c. 415, sec. 1, provides that the sale in bulk of a part or the whole of a stock of merchandise other than in the ordinary course of trade and in the usual prosecution of the seller's business shall be void as against his cred-

itors. unless he and the purchaser make an inventory, and unless the latter notify such creditors of the proposed sale, and of the price, terms, etc. The act was passed under the authority given to the legislature by Const. art. 4, pt. 2, c. 1, sec. 1, to make all manner of wholesome and reasonable laws as they shall judge to be for the good of the commonwealth. *Held*, that the act is not unconstitutional as infringing the liberty of contract.

The act is not objectionable as class legislation. *Squire* v. *Tellier* (Mass.), 69 N. E. 312.

Per Knowlton, C. J:

"The legislature undoubtedly assumed to act under what is termed broadly the police power, and more specifically to act under the authority directly conferred by part 2, c. 1, sec. 1, art. 4, of the Constitution of Massachusetts, which permits them 'to make, ordain and establish all manner of wholesome and reasonable orders, laws, statutes and ordinances . . . as they shall judge to be for the good and welfare of this commonwealth,' etc. Their power to regulate and limit the making of contracts and the use and disposition of property is very broad. This is illustrated by the statutes found in titles 12 and 13 of our Revised Laws, comprising chapters from 56 to 74, inclusive. This power is recognized in many decisions of the courts. *Com.* v. *Blackington*, 24 Pick. 352; *Blair* v. *Forehand*, 100 Mass. 136-139, 97 Am. Dec. 82, 1 Am. Rep. 94; *Watertown* v. *Mayo*, 109 Mass. 315, 12 Am. Rep. 694; *Com.* v. *Crowell*, 156 Mass. 215, 30 N. E. 1015; *Com.* v. *Huntley*, 156 Mass. 236, 30 N. E. 1127, 15 L. R. A. 839; *Com.* v. *Gilbert*, 160 Mass. 157-159. 35 N. E. 454, 22 L. R. A. 439; *Opinion of the Justices*, 163 Mass. 589, 40 N. E. 713, 28 L. R. A. 344; *Newton* v. *Joyce*, 166 Mass. 83, 44 N. E. 116, 55 Am. St. Rep. 385; *Com.* v. *Nutting*, 175 Mass. 154, 55 N. E. 895. 78 Am. St. Rep. 483; *Slaughter House Cases*, 16 Wall. 36, 21 L. Ed. 394; *Butchers' Union Company* v. *Crescent City Company*, 111 U. S. 746, 4 Sup. Ct. 652, 28 L. Ed. 585; *Frisbie* v. *United States*, 157 U. S. 160-165, 15 Sup. Ct. 586, 39 L. Ed. 657; *Plumley* v. *Massachusetts*, 155 U. S. 461, 15 Sup. Ct. 154, 39 L. Ed. 223; *Nutting* v. *Massachusetts*, 183 U. S. 553, 22 Sup. Ct. 238, 46 L. Ed. 324. Although the requirements of the act are very strict, we cannot say that the determination of the legislature, as between the interests of owners of stocks of merchandise and their creditors, was so far wrong as to render the statute unconstitutional. Within certain limitations, it is for the legislature to judge of the policy and expediency of a law, if, in other respects, they have power to enact it. *Bancroft* v. *Cambridge*, 126 Mass. 438-441; *Sawyer* v. *Davis*, 136 Mass. 239-241, 49 Am. Rep. 27; *Opinion of the Justices*, 163 Mass. 589-595, 40 N. E. 713, 28 L. R. A. 344; *Lawton* v. *Steele*, 152 U. S. 133, 14 Sup. Ct. 499, 38 L. Ed. 385. The statute is not objectionable as applying only to a particular class. It applies to all who come within the reasons for its enactment. *Com.* v. *Danziger*, 176 Mass. 290, 57 N. E. 461, and cases cited; *Rideout* v. *Knox*, 148 Mass. 368, 19 N. E. 390, 2 L. R. A. 81, 12 Am. St. Rep. 560. Similar statutes having the same object, but varying considerably in their provisions, have been enacted recently in many other states. In Tennessee and in Washington the highest court of the state has decided that the stat-

ute there enacted is constitutional. *Neas* v. *Borches*, 71 S. W. 50; *McDaniels* v. *J. J. Connelly Shoe Company*, 71 Pa. 37, 60 L. R. A. 947. The statute in Washington is very similar to that now before us. See, also, *Hart* v. *Roney*, 93 Md. 432, 49 Atl. 661, and *Fisher* v. *Herrman*, 95 N. Y. 392, in which the courts of Maryland and Wisconsin seem to assume the constitutionalty of their local statutes on this subject, which are somewhat less restrictive than that of Massachusetts."

See, *ante*, pp. 632, 682, 750.

PARENT AND CHILD—PERSONAL INJURIES TO MINOR CHILD—RIGHT TO DAMAGES.—A minor child cannot recover from its father and stepmother civil damages for personal injuries inflicted upon it by the latter. *McKelery* v. *McKelery* (Tenn.), 77 S. E. 664.

Per Beard, C. J:

"This is a suit instituted by a minor child, by next friend, against her father and stepmother, seeking to recover damages for cruel and inhuman treament alleged to have been inflicted upon her by the latter at the instance and with the consent of the father. Upon demurrer the suit was dismissed, and, the case being properly brought to this court, error is assigned upon this action of the trial judge.

"We think there was no error in this dismissal. At common law the right of the father to the control and custody of his infant child grew out of the corresponding duty on his part to maintain, protect, and educate it. These rights could only be forfeited by gross misconduct on his part. The right to control involved the subordinate right to restrain and inflict moderate chastisement upon the child. In case parental power was abused, the child had no civil remedy against the father for the personal injuries inflicted. Whatever redress was afforded in such case was to be found in an appeal to the criminal law and in the remedy furnished by the writ of *habeas corpus*. So far as we can discover, this rule of the common law has never been questioned in any of the courts of this country, and certainly no such action as the present has been maintained in these courts. It is true that no less celebrated an authority than Judge Cooley, in the second edition of his work on Torts, at page 171, observes that 'in principle there seems to be no reason it should not be sustained.' No case, however, is cited in support of this text. In fact, the only case which the diligence of counsel has been able to find in which this particular question has been discussed is that of *Hewlett* v. *George, Ex'r*, reported in 68 Miss. 703, 9 South. 885, 13 L. R. A. 682. It is there said: 'So long as the parent is under obligation to care for, guide, and control, and the child is under reciprocal obligation to aid and comfort and obey, no such action as this can be maintained. The peace of society, and of the families composing society, and of a sound public policy designed to subserve the repose of families and the best interests of society, forbid to the minor child a right to appear in court in the assertion of a claim to civil redress for personal injuries suffered at the hands of the parent. The state, through its criminal